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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,570	02/24/2004	Rodney O. Nuckles	HO-P02734US1	9872
26271	7590	06/15/2005	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			DONOVAN, MAUREEN C	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,570

Applicant(s)

NUCKLES ET AL.

Examiner

Maureen C. Donovan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-22 and 25-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14, 16-22 and 25-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to communications: Amendment filed 23 March 2005.
2. Claims 1-14, 16-22 and 25-28 are pending.
3. Claims 15, 23 and 24 have been cancelled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 25-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 25-28 recite the limitation "the starch ingredient". There is insufficient antecedent basis for this limitation in the claim. For examining purposes the "starch ingredient" will be interpreted to mean the pasta, rice and grain food material, clarification is required.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 25-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support for the limitation in claims 25-28 regarding the weight percent of starch ingredient that is present cannot be found in the disclosure. The criticality of the end points of 27% and 47% is also not found in the disclosure.

Terminal Disclaimer

3. The terminal disclaimer filed on 23 March 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/373122 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

A person shall be entitled to a patent unless –

4. Claims 1,2,3,7,8,11,12,13,14,16,17,18,19,20,21 and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Huttenbauer, US patent number 6,676,986.

Huttenbauer discloses a process for preparing a gelled food product. Huttenbauer discloses that the process involves:

- first preparing a food material by comminuting that food product (see Column 2, lines 56-68), wherein that food material is a pasta (see Column 2, lines 49-55)

- preparing a gelling agent to form a gelling solution, wherein the gelling agent is a gelatin or potato starch (see Column 3, lines 15-35). It is interpreted that Huttenbauer's disclosure of the use of an aqueous gel meets the limitation of a gelling solution.

- adding the gelling solution to the food product (see Column 3, lines 8-13)

- placing the food product in a mold (see 3, lines 49-62)

- cooling the food product and gelling solution (see Column 4, lines 1-10)

- removing the food product from the mold following the cooling step (see Column 5, lines 12-18).

Huttenbauer discloses using 0.2% to 4% of the gelling agent (see Column 3, lines 20-25). Huttenbauer discloses that the gelling solution can further comprise a spice pack (see Column 3,

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lines 36-48 and Column 5, lines 63-66). Huttenbauer discloses a final food product of pasta in sauce (see Columns 7 and 8, Example 8). Huttenbauer discloses keeping the food products at freezer temperatures in order to keep them shelf stable (see Column 8, lines 19-24). Huttenbauer discloses a food product obtained by the process as shown above, wherein the food product is considered to be an enrobed coated food product. Huttenbauer discloses single individual portions of the food product for consumption (see Column 8, lines 19-23), and therefore inherently the portions would provide a control system for measured amounts of food components selected from the group consisting of carbohydrates, fats, salt, protein, fiber, calcium.

With regard to claims 7,8,11: Huttenbauer discloses heating the food product for final consumption, at 75°C (167°F) for 2 to 20 minutes (see Column 8, lines 19-23). Since Huttenbauer discloses the process of making the product as instantly claimed and meets the gelling agent limitations of claims 2,3 and 11 it is considered inherent that the composition would not re-gel after final preparation, before consumption or after consumption, absent any clear and convincing evidence and/or arguments to the contrary. Additionally since Huttenbauer discloses adding other food ingredients to the gelled food product before consumption, as in sauce and cheese (see Columns 7 and 8, Example 8), it is considered inherent that the gelled food product would not re-gel when mixed with other food products. As the Patent Office does not possess the facilities to test the referenced composition and that of the claimed invention, the burden then shifts to applicant to demonstrate any patentable difference between the two.

With regard to claims 18 and 19: Huttenbauer discloses using the gelling agent of potato starch, heating the food product at 167°F, and heating for 2 to 20 minutes. Therefore since Huttenbauer discloses the same gelling agents and processing conditions as instantly claimed it is considered inherent that the gelling agent would melt at a temperature range of 90°F to 130°F and destruct at a temperature range of 140°F to 175°F.

With regard to claims 25-28: Huttenbauer discloses using 800 kilograms of pasta and 120 kg of the aqueous gel, therefore discloses that the pasta is present at 87% of the food product (see Columns 7 and 8, Example 8).

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5. Claims 1,2,3,4,16,17,20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamamoto, US patent number 6,770,312.

Yamamoto discloses a process for preparing a gelled food product. Yamamoto discloses that the process involves:

- first preparing a food material by boiling that food product (see Figure 3 and Column 4, lines 29-41), wherein that food materials are pasta or rice (see Column 2, lines 36-48)

- preparing a gelling agent to form a gelling solution, wherein the gelling agent is a starch (see Column 7, lines 26-46).

- adding the gelling solution to the food product (see Column 4, lines 29-41 and Column 7, lines 55-56)

- cooling the food product and gelling solution (see Column 4, lines 29-41)

Yamamoto discloses using 0.1% to 10% of the starch gelling agent (see Column 3, lines 20-25). Yamamoto discloses a final food product of risotto (see Column 1, lines 31-32).

Yamamoto discloses keeping the food products at freezer temperatures in order to keep them shelf stable (see Column 3, lines 23-35 and Column 15, lines 11-16). Yamamoto discloses a food product obtained by the process as shown above, wherein the food product is considered to be an enrobed food product (see Figures 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1,2,3,5,12,13,16,17,20,21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gosselin, US patent number 6,743,452 in view of Hamm, US patent application number 2003/0203096.

Gosselin discloses a process for making a frozen food product and a food product that results from the process involving the steps of:

- Cooking a pasta product (see Column 15, lines 8-10)
- Placing the pasta and a sauce in a mold (see Column 17, Example 3 and Column 9, lines 13-30)
- Cooling the food product and the sauce together, wherein the sauce completely surrounds the pasta (see Column 17, Example 3 and Column 15, lines 1-15).

Gosselin discloses keeping the food products at freezer temperatures, therefore it is interpreted that the food product would not be shelf stable otherwise(see Abstract). Gosselin discloses that the sauce is 22.6% to 31.1% of the food product (see Examples 2-4).

Gosselin does not disclose that the sauce has a gelling agent.

Hamm teaches a sauce for use with pasta product and that the sauce has seasonings in it (see section 0028). The sauce as taught by Hamm also contains xanthan gum, which is a gelling agent (see section 0024) and a starch ingredient (see section 0032). Hamm teaches that the xanthan gum is present at 0.05% to 0.4% of the sauce and the starch is present from 3% to 5.5% (see section 0024). Hamm teaches that the sauce is made by adding together the sauce and the gelling agent (see section 0043 and 0047 and page 6, Example 6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the sauce as taught by Hamm in the process and food product as disclosed by Gosselin since Gosselin discloses the use of a sauce, but is not specific in the sauce required and using the sauce of Hamm that is freeze-thaw tolerant (see Hamm, Abstract), would generate a more stable product, since it is known in the art that the addition of xanthan gum to a sauce product will increase its freeze thaw stability.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have demolded the food product of Gosselin in view of Hamm prior to product packaging if it

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was desired to present the product to the consumer without the pan and therefore to be able to re-use the pans in processing to make more food products.

7. Claims 1,2, 9,10,12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishii, JP application number 11-211469 in view of Faber, US patent number 3,930,050.

Ishii discloses a process for making a frozen food product involving the steps of:

- Cooking a pasta product (see section 0008)
- Adding gelatin to a seasoning liquid (see section 0008)
- Adding the gelling solution to the cooked pasta (see section 0008)
- Freezing the pasta and sauce product (see section 0008).

Ishii does not disclose that bromelain or papain is added to the gelling solution.

Faber teaches adding the enzymes bromelain and papain to a gelatin containing food product that are stored at refrigeration (see Column 1, lines 32-39).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have added the bromelain and papain enzymes as taught by Faber to the gelatin containing sauce of Ishii, since adding the enzyme would prevent the gel from becoming rubbery, glassy, stiff, watery and cracked under refrigeration storage (see Faber, Column 1, lines 36-39).

Response to Arguments

8. Applicant's arguments, see Amendment filed 23 March 2005, with respect to the rejection(s) of claim(s) 1-14,16-22 and 25-28 have been fully considered and are persuasive. Therefore, the rejections made in the previous Office Action regarding claims 1-14,16-22 and 25-28 have been withdrawn. However, upon further consideration, a new ground(s) of rejection of claims 1-5,7-14,16-22 and 25-28 is made in the above Office Action.

Allowable Subject Matter

9. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and

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any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: Claim 6 is directed to a gelling solution for use on pasta, rice or grain that contains 2% gelatin and 0.05% carrageenan. The closest prior art regarding using this combination of gelling agents is in regards to using them with meat products (see Shaw, US patent number 4,196,219 in view of Bienvenu, US patent number 5858426 as well as the rejection made in the Office action mailed 29 July 2004 on page 8). There is no motivation present that would combine these references with any other prior art in order to use this gelling agent combination with a pasta, rice or grain product. Additionally, prior art teaches using a gelling agent of 2% gelatin with a rice product (see Naito, US patent number 6,627,237), but there is no reference or motivation to use 0.05% carrageenan with the 2% gelatin solution. The Handbook of Hydrocolloids teaches the use of carrageenan in food products, however does not teach the low concentration of 0.05% (see Table 5.3 page 99, Handbook of Hydrocolloids).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C. Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCD



KEITH HENDRICKS
PRIMARY EXAMINER